IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRIMINAL REVISION NO.2126 OF 2007

DATE OF DECISION: DECEMBER 20 ,2007

Didar Singh and others

.....Petitioners

VERSUS

State of Punjab

....Respondent

CORAM:- HON'BLE MR.JUSTICE RANJIT SINGH

1. Whether Reporters of local papers may be allowed to see the judgement?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

PRESENT: Mr. G. S. Kaura, Advocate,
for the petitioners.

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RANJIT SINGH, J.

The petitioners stand summoned as additional accused by the Additional Sessions Judge, Rupnagar, under Section 319 Cr.P.C.

Ajit Singh and others are being prosecuted for offences under Sections 307, 341, 325, 323, 148 read with Section 149 IPC. This case was registered on the statement of Roshan Ali. On 15.7.2005. After investigation, petitioners, Didar Singh, Dhir Singh @ Randhir Singh and Chhotu @ Rajinder Singh were found innocent and placed in column No.2. Complainant Roshan Ali appeared as PW3 and made statement before the Court. Thereafter, the prosecution had filed this application under Section 319 Cr.P.C. to summon the

petitioners.

While, impugning the said order, learned counsel has mainly contended that Roshan Ali, complainant, was yet to be cross-examined when this application was moved, leading to summoning of the petitioners. As per the counsel, the petitioners could have been summoned only after the conclusion of cross-examination and not before that. In this regard, he has referred to the case of ***Mohd. Shafi Vs. Mohd. Rafiq and another,*** 2007 (2) RCR (Criminal) 762. This is a case where the application was moved before the trial Court for summoning an additional accused. The trial Court noticed that till then a witness had only been examined in-chief and declined to accept the application at that stage. This order was impugned before the High Court, which allowed the petition and set-aside the order passed by the trial Court. The same was impugned before the Hon'ble Supreme Court and in this background, it is held:-

> "From the decisions of this Court, as noticed above, it is evident that before a Court exercises its discretionary jurisdiction in terms of Section 319 of the Code of Criminal Procedure, it must arrive at the satisfaction that there exists a possibility that the accused so summoned is in all likelihood would be convicted. Such satisfaction can be arrived at inter alia upon completion of the cross-examination of the said witness. For the said purpose, the court concerned may also like to consider other evidence. We are, therefore, of the view that the High Court has committed an error in passing the impugned judgment. It is accordingly set-aside. The appeal is allowed."

The ratio that can be culled out from the above observation of the Hon'ble Supreme Court is that no exception can be taken where the trial Court is of the view that the application should receive its consideration only after conclusion of the cross-examination. It is the discretion to be exercised by the trial Court and if the Court is of the view that such discretion should only be exercised after conclusion of cross-examination of a witness, obviously there can not be any exception taken to this approach. From this and the above observation of the Hon'ble Supreme Court, it would not be possible to contend that any binding precedent is being set in this judgment that additional accused can only be summoned upon conclusion of the cross-examination of a witness. The High Court order was set-aside with the observation that no exception can be taken where the trial Court wishes to arrive at its satisfaction after the cross-examination is over. Rather, the Hon'ble Supreme Court, in the case of ***Rakesh and anr. Vs. State of Haryana,*** AIR 2001 SC 2521 has categorically held that it is difficult to hold the contention that term evidence as used in Section 319 Cr.P.C. would mean evidence which is tested by cross-examination. The Court further held that the question of testing the evidence by cross-examination would arise only after addition of the accused. The contention raised before the Hon'ble Supreme Court in the case of Rakesh (supra) was precisely to this effect, as can be seen from the following:-

> "Learned senior counsel Mr.Ranjit Kumar submitted that the High Court materially erred in dismissing the revision application filed by the appellants and submitted that the

term `evidence' mentioned in Section 319 in reference would mean examination-in-chief and cross examination of the witnesses. It is his contention that in a case where the name of the accused is mentioned in the FIR and after investigation in the report submitted by the Investigating Officer, the said person is not added as accused and the case is committed to the Sessions Court, before adding that person as an accused, the Sessions Court ought to have permitted cross examination of the witnesses. He referred to halsbury's Laws of India, Ist Edition, Volume 15, in paragraph 145.242, wherein it has been stated:

"The mere statement of the plaintiff's witnesses cannot constitute the plaintiff's evidence in the case unless and until it is tested by cross-examination. The right of the defence to cross-examine the plaintiff's witnesses can, therefore, be looked upon not as a part of its own strategy of defence but rather as a requirement without which the plaintiff's evidence cannot be acted upon. (emphasis supplied). "

Referring to the case of ***Ranjit Singh Vs. State of Punjab,*** 1998 (4) RCR (Crl.) 552 (SC), the Supreme Court observed that Section 319 Cr.P.C. contemplates existence of some evidence appearing in the course of trial from where the Court can prima-facie conclude that the person arrayed before it is also involved in the commission of crime for which he can be tried with those already named by the police. In this case, the Hon'ble Supreme Court

clarified that "of course it is not necessary for the Court to wait until the entire evidence is collected for exercising the said powers." Having so observed, the Hon'ble Supreme Court held that it is difficult to accept the contention that evidence as used in Section 319 Cr.P.C. would mean evidence, which is tested by cross-examination. The finding in this regard is as under:-

> "Hence, it is difficult to accept the contention of the learned counsel for the appellants that the term, `evidence' as used in Section 319 Criminal Procedure Code would mean evidence which is tested by cross-examination. The question of testing the evidence by cross-examination would arise only after addition of the accused. There is no question of cross-examining the witness prior to adding such person as accused. Section does not contemplate an additional stage of first summoning the person and giving him an opportunity of cross-examining the witness who has deposed against him and thereafter deciding whether such person is to be added as accused or not. Word "evidence" occurring in sub-section is used in comprehensive and broad sense which would also include the material collected by the investigation officer and the material or evidence which comes before the Court and from which the Court can prima facie conclude that person not arraigned before it is involved in the commission of the crime."

Accordingly, contention raised by counsel for the petitioners to impugn the order can not be accepted. It otherwise is

logical to so say. It is to be noticed that the additional accused would be unrepresented before the Court till added and any cross-examination of the witness can not be at his instance and has to be on behalf of some other accused facing trial.

The revision is accordingly dismissed in limine.

December 20,2007 **(RANJIT SINGH)**
khurmi **JUDGE**